

Prabhjot (Migration) [2023] AATA 1859 (14 June 2023)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mrs Prabhjot
REPRESENTATIVE:	Mr Mandeep Singh Sidhu (MARN: 0744076)
CASE NUMBER:	2011788
HOME AFFAIRS REFERENCE(S):	BCC2020/346625
MEMBER:	Alison Mercer
DATE:	14 June 2023
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Skilled Regional Sponsored (Provisional) visa for reconsideration, with the direction that the applicant meets the following criteria for a 489 - Skilled - Regional (Provisional) visa: • cl.489.311 of Schedule 2 to the Regulations 1994.

Statement made on 14 June 2023 at 11:56am

CATCHWORDS

MIGRATION – Skilled Regional Sponsored (Provisional) (Class SP) visa – Subclass 489 (Skilled – Regional (Provisional)) – member of family unit – spouse of primary applicant – validly married – genuine and continuing relationship – length of relationship, financial documentation in joint names and photos – limited evidence of social aspects of relationship and nature of commitment – decision made without hearing necessary – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5(1), 5F, 65, 359(2), 360(2)(a)
Migration Regulations 1994 (Cth), rr 1.12(2), 1.15A, Schedule 2, cl 489.311

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Skilled Regional Sponsored (Provisional) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 7 February 2020. The delegate refused to grant the visa on 30 June 2020 on the basis that the applicant did not satisfy the requirements of cl 489.311 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). Clause 489.311 of Schedule 2 relevantly requires the applicant to be a member of the family unit of a person who holds a subclass 489 visa as the primary visa applicant at the time of decision.
3. The delegate found that the applicant had applied as the spouse of the primary visa applicant, Mr Tejwant Singh, and accepted that the applicant and Mr Singh were legally married in January 2020. However, the delegate was not satisfied that their relationship satisfied the indicia for a genuine spouse relationship set out in r.1.15A of the Regulations and s.5F of the Act. Accordingly, the delegate found that the applicant was not the spouse, and therefore not a member of the family unit, as defined in r.1.12 and s.5, of Mr Singh. She therefore did not meet cl.489.311 and could not be granted a subclass 489 visa.
4. The Tribunal received a review application from the applicant on 17 July 2020, which was accompanied by a copy of the delegate's decision and an authority by which appointed a registered migration agent, Mr Mandeep Singh Sidhu, as her representative and authorised recipient for correspondence.
5. On 29 May 2023, the Tribunal wrote to the applicant via her agent to invite her to provide, pursuant to s.359(2), information demonstrating that she was the spouse of the primary visa applicant, Mr Tejwant Singh, and thus met the criteria to be a member of his family unit. The Tribunal requested that the information be provided by 13 June 2023.
6. On 13 June 2023, the applicant and her agent provided the following information to the Tribunal:
 - joint bank statements for the applicant and Mr Singh, for the period August 2020 to February 2023;
 - various utility bills in joint names of the applicant and Mr Singh from 2021 to 2023;
 - property leases in joint names for the applicant and Mr Singh, dated 26 July 2020, 21 December 2020, 23 December 2021, and 8 February 2023;
 - photographs of the applicants' wedding, wedding reception, and various family events and holidays together, undated; and
 - vehicle purchase contract signed by the applicant and Mr Singh dated 24 February 2022, receipts for lawnmower, and furniture issued to Mr Singh, various dates in 2021 and 2022, with address listed as joint rental tenancy.
7. In reaching its decision the Tribunal did not consider a hearing to be necessary, as it was able to find in favour of the applicant on the basis of the material before it, pursuant to section 360(2)(a) of the Act.

8. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF LAW, CLAIMS AND EVIDENCE

9. The issue in this review is whether the applicant is a member of the family unit of the primary visa applicant, Mr Tejwant Singh, and satisfies cl 489.311.
10. Section 5(1) of the Act provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 (the Regulations). Regulation 1.03 provides 'member of the family unit' has the meaning set out in reg 1.12. The definition in reg 1.12 applies for the purposes of both the Act and the Regulations.
11. Regulation 1.12(2) provides that a person is a member of the family unit of another person (the family head) if the person is:
- the spouse or de facto partner of the family head;
 - a child or step-child of the family head or their spouse or de facto who is not engaged, or has a spouse or de facto partner and has not turned 18 or, if aged between 18 and 22 years of age is dependent on the family head (or partner), or if 23 years of age or older is wholly or substantially reliant on the family head (or partner) because they are incapacitated for work due to loss of bodily or mental functions;
 - a dependent child of a dependent child of the family head or of their spouse or de facto partner (grandchild).
12. In this instance, the applicant is claiming to be the spouse of Mr Tejwant Singh.
13. A person is a 'spouse' if they are in a 'married relationship' with the family head. 'Spouse' is defined by s 5F of the Act, which provides that:
- the couple must be married to each other in a marriage that is valid under the Migration Act;
 - the couple must have a mutual commitment to a shared life as a married couple to the exclusion of all others;
 - their relationship is genuine and continuing, and that the couple live together or do not live separately and apart on a permanent basis.
14. The definition applies to same sex and different sex couples.
15. When considering whether the above requirements in s 5F are satisfied and the applicant is the spouse of the family head, the Tribunal may consider any of the circumstances outlined in reg 1.15A of the Regulations. These circumstances are the financial aspects of the relationship, the nature of the household, the social aspects of the relationship, and the nature of the persons' commitment to each other.
16. The Department's file contains a marriage certificate indicating that the applicant and Mr Tejwant Singh were married in Melbourne, Australia on 21 January 2020. The Tribunal accepts that the couple are married to each other in a valid marriage.
17. The delegate also accepted the marriage was valid but made the following observations:

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The Department sent a request on 09 February 2020 for further evidence of relationship, among other items. The Department specifically requested evidence of the financial and social aspects of the relationship and the nature of the household and commitment to each other.

The applicant provided the following in response:

- ✂ Form 80
- ✂ Marriage Certificate
- ✂ Marriage Photograph
- ✂ Emails about their wedding booking
- ✂ Relationship Statement Prabhjot
- ✂ Relationship Statement Tejawant Singh
- ✂ Joint Bank Account Detail Prabhjot and Tejawant
- ✂ Photographs Birthday Celebration and Some other place
- ✂ Marriage Ceremony Confirmation Email Victorian Marriage Registry Team

As evidenced by the marriage registration certificate provided, I am satisfied that the applicant and the primary visa holder were legally married on 21 January 2020, with the marriage registered on 18 February 2020. I am also satisfied that the marriage is recognised under Australian Law. However, in assessing the applicant's relationship claims, I have placed more weight on the relationship as a whole rather than the provision of one aspect, such as the marriage registration certificate.

In assessing the financial aspects of the applicant's relationship with the primary visa holder, I have considered the following factors: the joint ownership of assets, any joint liabilities, the extent to which the applicant and primary visa holder have pooled their financial resources, any legal obligations each party has to the other and the general sharing of daily household expenses. I acknowledge the provision of a joint savings bank account with NAB. However, this account does not show any regular payments or deposits between the two parties. I do not place any great weight on this item. There is no evidence before me that the applicant and primary visa holder share joint ownership of any assets. There is no evidence before me that they have any joint financial liabilities. There is no evidence the applicant and primary visa holder share daily household expenses. Consequently, I am not satisfied that the financial aspects of the relationship have been sufficiently established.

In assessing the social aspects of the relationship, I have considered the social interactions, the way the couple represent their relationship to others, and the level of recognition of the relationship by friends and family, as a reasonable test of the genuineness of a relationship.

I acknowledge the photos provided in support of their relationship. However, the photos provided only show their wedding and are predominantly of the applicant and primary visa holder. There are a few photos of the applicant and primary visa holder with family at a birthday party and a restaurant. I place some weight on this as there are photos of the applicant and primary visa holder with family. However, there is no evidence before me of the social interaction between the applicant and primary visa holder. There is no evidence before me that friends recognise them as a couple. I am

unable to sufficiently establish, based on the documents before me, how the primary visa holder and applicant represent their relationship to others. From the evidence and information before me, it appears the primary visa holder and the applicant do not openly socialise and are not widely recognised as a couple by friends and family from both the applicant and primary visa holder. I am not satisfied the applicant has sufficiently supported their claim of a relationship with the primary visa holder in terms of the social aspects of that relationship.

In assessing the nature of the household, I have considered the domestic living arrangements, such as shared living spaces and daily routine, as a reasonable test of whether the applicant and primary visa holder live together permanently. The date of the marriage was on 21 January 2020 as evidenced by the marriage certificate. The applicant's responses on the Form 80, along with information provided with the application, confirms the applicant resides in Noble Park, Melbourne but I am unable to determine, from the evidence and information before me, if this is with the primary visa holder. Apart from the statements provided by the applicant and primary visa holder, there is no third party verifiable evidence before me to suggest the applicant resides with, or has resided with the primary visa holder for a reasonable amount of time. Consequently, I am not satisfied that the applicant and primary visa holder have established a joint household, that they share the responsibilities of a household or that they live together permanently.

In assessing the nature of the applicant and primary visa holder's commitment to each other, I have considered the circumstances of their meeting, relationship development, length of time they have lived together, the degree of companionship and emotional support that they draw from each other and whether they see the relationship as a long-term one. I have considered again the relationship statements from the applicant and primary visa holder. I am able to determine from this the circumstances of their meeting and the development of their relationship. However, there is no information to show the degree of companionship and emotional support the applicant and primary visa holder draw from one another. Other than the provision of the marriage certificate, I am unable to establish that they see the relationship as a long-term one. I am not satisfied the applicant has sufficiently supported their claim of a relationship with the primary visa holder in terms of the nature of their commitment to one another.

In summary, very little evidence has been provided to establish the financial aspects of the applicant's relationship with the primary visa holder. No third party verifiable evidence has been provided to suggest the applicant resides with, or has resided with the primary visa holder for a reasonable amount of time or have shared a household. There is very little evidence that the applicant and primary visa holder present themselves as a married couple to the wider community or their family and friends. There is no evidence that they undertake regular joint social activities, and no evidence that they have taken holidays or short breaks together, attended any significant events together apart from the wedding ceremony nor that they belong to any organisations or groups. There is limited evidence the applicant and primary visa holder share a committed and ongoing relationship.

Based on the evidence provided and taking into account regulatory requirements and my concerns stated above, I am not satisfied the applicant's relationship with the primary visa holder meets Regulation 1.15A. Accordingly, the applicant is not considered a member of the family unit of the primary visa holder as per Regulation 1.12. Therefore, I find that the applicant does not meet clause 489.311.

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18. The Tribunal has had the benefit of receiving additional information from the applicant and her husband than was available to the delegate at the time of the primary decision in mid-2020. It further notes that the applicant and Mr Singh have now been married for over 3 years.

19. The Tribunal has considered this information in relation to the factors set out in r.1.15A.
20. In relation to the financial aspects of the relationship, the Tribunal has reviewed the joint bank account statements provided from 2021 to 2023, and is satisfied that they show payment of wages for both the applicant and Mr Singh into the account, and debits such as rent, utility bills, insurance, and groceries, as well as some overseas funds transfers. The applicants have also provided evidence of their joint leases from 2020 to date (for 2 different addresses during that time) and their joint purchase of a vehicle in 2022, and household furniture purchases by Mr Singh in 2021. While the applicant and Mr Singh have not provided evidence of substantial joint assets (such as property, shares or the like), the Tribunal considers that this is not unusual for a relatively young married couple who hold temporary visas. The financial arrangements that they do have are in joint names, and are jointly operated.
21. In relation to the nature of the household, the Tribunal is satisfied that the applicant and Mr Singh live in the same rental premises and are both on the lease. It is evident from their joint bank statements that they are both working and contributing to the household finances.
22. In relation to the social aspects of the relationship, the applicants have not provided a great deal of recent evidence, such as statements from friends or family. Nevertheless, they provided photographs of their wedding and reception in 2020, and photographs of other social events at which it can be seen that some of the same family members and/or friends are in attendance.
23. Similarly, in relation to the nature of the persons' commitment to each other, the applicants have not provided statements about their relationship. However, the parties have now been married for over 3 years and there is no evidence before the Tribunal to suggest that they are not still living together and/or not committed to their long term spouse relationship.
24. On balance, the Tribunal is satisfied from the updated evidence that the couple must have a mutual commitment to a shared life as a married couple to the exclusion of all others, and that their relationship is genuine and continuing, and that the couple live together or do not live separately and apart on a permanent basis, as per s.5F.
25. Accordingly, the Tribunal is satisfied that the applicant is the spouse of the family head and cl 489.311 is met.

DECISION

26. The Tribunal remits the application for a Skilled Regional Sponsored (Provisional) visa for reconsideration, with the direction that the applicant meets the following criteria for a 489 - Skilled - Regional (Provisional) visa:
 - cl 489.311 of Schedule 2 to the Migration Regulations 1994.

Alison Mercer
Member

1.12 Member of the family unit

- (1) This regulation has effect for the purposes of the definition of member of the family unit in subsection 5(1) of the Act.

General rule

- (2) A person is a member of the family unit of another person (the *family head*) if the person is:
- (a) a spouse or de facto partner of the family head; or
 - (b) a child or step-child of the family head or of a spouse or de facto partner of the family head (other than a child or step-child who is engaged to be married or has a spouse or de facto partner) and:
 - (i) has not turned 18; or
 - (ii) has turned 18, but has not turned 23 and is dependent on the family head or on the spouse or de facto partner of the family head; or
 - (iii) has turned 23 and is under paragraph 1.05A(1)(b) dependent on the family head or on the spouse or de facto partner of the family head; or
 - (c) is a dependent child of a person who meets the conditions in (b).

This subregulation has effect subject to the later subregulations of this regulation.

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